

1-3-08UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
MARK EVANS PULLEN and)	
MARY KAY PULLEN,)	CASE NO. 07-65415-MHM
)	
Debtors.)	

ORDER DENYING MOTION TO STAY

On July 9, 2007, an order was entered *inter alia* vacating the emergency order granting the motion of Cain Harris ("Harris"); modifying and ratifying the order granting Debtors' motion to extend the automatic stay; granting Debtors' motion for protective order regarding Harris' request for production of Debtors' tax returns; and continuing the confirmation hearing. The findings of fact and conclusions of law are set forth in that order and will not be repeated or paraphrased here. On July 12, 2007, Harris filed a notice of appeal of the July 9, 2007 order. Harris neither sought nor obtained a stay of the July 9, 2007 order pending the appeal.

On July 30, 2007, Debtor filed a Motion for Attorneys Fees ("Sanctions Motion") seeking an assessment of attorneys fees against Harris in connection with the motions filed by Harris and denied in the July 9, 2007 order. On August 20, 2007, Harris filed a motion to stay consideration of the Sanctions Motion, asserting that the filing of the notice of

appeal deprived the bankruptcy court of the subject matter jurisdiction to consider the matters raised in the Sanctions Motion. Debtor opposes stay of the Sanctions Motion.

Additionally, on October 26, 2007, Debtor filed a motion to hold Harris in contempt for violation of the automatic stay (the "Contempt Motion"). Harris filed a response to that motion and asserted, *inter alia*, that this court lacks jurisdiction to hear the motion because of the pending appeal of the July 12, 2007 order.

The parties have filed briefs on the issue of whether this court has jurisdiction to consider the Sanctions Motion and the Contempt Motion. Pursuant to 11 U.S.C. §102, hearing on the issue is unnecessary.

The filing of a notice of appeal is an event of jurisdictional significance. A notice of appeal divests the bankruptcy court of jurisdiction over "those aspects of the case which are involved in the appeal." *In re Norris Grain Co.*, 167 B.R. 258 (Bankr. M.D. Fla. 1994). *See also Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982). For example, in *Harsh Investment Corp v. Bialec*, 15 B.R. 901 (9th BAP 1981), the court concluded the bankruptcy court lacks jurisdiction to consider an application for an injunction to prevent a foreclosure sale when the order granting the motion for relief from stay had been appealed. In refusing to consider the injunction application while the appeal was pending, the court opined that the motion for an injunction was a "poorly disguised effort to relitigate" the issues that had been appealed.

On the other hand, the filing of a notice of appeal does not remove jurisdiction to consider any issues that arise in the case. In the case of *In re Allen-Main Associates, L.P.*, 243 B.R. 606 (Bankr. D. Conn. 1998), following the appeal by the petitioning creditor of the dismissal of an involuntary Chapter 7 petition, the bankruptcy court nevertheless retained jurisdiction to consider a motion to assess attorney fees against the petitioning creditor. The court explained that the issues involved in the appeal were completely different from the request for fees and costs and did not interfere with the order appealed but was merely implemental of the dismissal order, which had not been stayed. *Accord, In re VII Holdings Co.*, 362 B.R. 663 (Bankr. D. Del. 2007). Unless the appellant obtains a stay pending appeal, the bankruptcy court retains jurisdiction to decide issues that are different from, although collateral to, those involved in the appeal. *In re Section 20 Land Group Ltd.*, 252 B.R. 812 (Bankr. M.D. Fla. 2000); *In re Board of Directors of Hopewell International Insurance Ltd.*, 258 B.R. 580 (Bankr. S.D. N.Y. 2001).

Debtors' Sanctions Motion and the Contempt Motion involve issues collateral to but different from the issues appeal. Neither motion threatens to moot any of the issues on appeal. Conversely, resolution of the appeal will not necessarily render an order on the Sanctions Motion or the Contempt Motion moot. Therefore, the pending appeal of the order entered July 9, 2007 does not require a stay of consideration of the Sanctions Motion or the Contempt Motion. Accordingly, it is hereby

ORDERED that the requests of Cain Harris to stay consideration of the Sanctions Motion and the Contempt Motion are *denied*.

The Clerk is directed to serve this Order upon Debtors, Debtors' attorney, attorney for Cain Harris, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 3^d day of January, 2008.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE